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NO. 86-556

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

LAMONT MOORE AND EDWIN BRYCE,
Petitioners,
vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON PETITION FOR WRIT OF
CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Courts may set, without violating the Eighth and Fourteenth Amendments to the United States Constitution, a pre-trial bail bond of one million dollars with full security when that Court has taken into consideration a myriad of relevant factors in arriving at its decision.

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OPINION BELOW

Initially, the Circuit Court of Cook County, Illinois, Honorable Thaddeus Kowalski, Judge presiding, set the petitioner's bail at two million seven hundred thousand dollars, full cash value. Thereafter, upon application by petitoners the Illinois Appellate Court, First District, reduced bail for each petitioner to two

hundred thousand dollars requiring a ten per cert deposit of that amount. (See Petitioners' Appendix A-3,4) The respondent then made application to the Illinois Supreme Court for an increase of the bail as to each petitioner. That motion was allowed, in part, by the Supreme Court on June 25, 1986, and bond for cash petitioner was set at one million dollars, full cash value. (See Petitioner's Appendix A-1,2).

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as treated more fully below, respondent submits that no good reason exists for this Court to exercise its sound judicial discretion and grant the instant petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amendment VIII provides, in pertinent part, that:

> "Excessive bail shall not be required..."

U.S. Const., amendment XIV provides, in pertinent part, that:

> "...[N]or shall any state deprive any person of life, liberty or property without due process of law."

STATEMENT OF THE CASE

If trial were to be had in this cause, respondent submit that the evidence would show the following:

On March 11, 1986, a security guard waved down a Chicago police officer and informed the police that petitioner Bryce had asked the security guard if he would retrieve a bag of clothing from a motel room which had been locked due to lack of payment. The room was numbered 802 in the Inn of Chicago. In order to verify that the bag was Bryce's, the security guard opened the green bag in the room and saw a submachine gun loaded with two clips and a cartridge. Further inspection of the room revealed 10 pounds of cocaine.

The police received from the hotel the billings of the room in question. Therein it was revealed that outgoing calls had been placed to the Lenox House Hotel. Upon arriving at that hotel the police ascertained that the petitioners were registered to room 907. The police proceeded to the room, knocked on the door and were invited into the room by petitioner Moore. Once inside the room the officers saw in plain view a clear plastic bag lying on the table, which was believed to contain marijuana.

The petitioners were then placed under arrest and advised of their rights. When asked by the police if this was all the contraband they had, petitioner Moore said for them to look around because that was all they had. The officers then proceeded to check the rest of the room and found, hidden in the couch, twenty-seven bundles

of United States currency totalling $35,293.00. The officers also found $14,000 in United States currency in a bag found in the closet. Also recovered was a notebook which contained entries which recorded alleged narcotics records.

The officers asked Moore if the money was his, whereupon he turned to Bryce and asked him if he knew anything. Bryce said that the money was not his and that Santa Clause must have left it. While in route to the police station petitioner Moore mad an unsolicited comment to the effect of "How did you catch us, were you following us?"

Once at the police station a line-up was held wherein the petitioners were identified as residents of the motels. A further check of the records of the Inn of Chicago established that room 802 of that establishment was registered to petitioner

Moore. The registery also contained information which allowed petitoner Bryce entry into the room.

After a hearing, and pursuant to Ill. Rev. Stat. 1985, ch. 38, par. 110-7, the trial court, in its discretion, set bond for both petitioners at an amount equal to the street value of the narcotics, which was $2,700,000.00. The Appellate Court, upon petitioners' motion, returned the case to the trial court for a further hearing. On March 19, 1986, the trial court, after a hearing, refused to reduce the petitioners' bonds. Thereafter, the petitioners returned to the Appellate Court and on March 21, 1986, that court reduced each petitioners bond to $200,000.00 with ten per cert security required. The respondent then made a motion to the Illinois Surpeme Court to increase bond and, that court, after full briefing by the parties allowed

the motion in part and increased each petitioner's bond to $1,000,000.00, with full cash value required.

REASON FOR DENYING THE WRIT

THE SETTING OF PRE-TRIAL BOND VIOLATES NEITHER THE EIGHTH OR THE FOURTEENTH AMENDMENTS TO THE CONSTITUTION WHEN THE AMOUNT OF THE BOND SET IS THE RESULT OF SOUND DISCRETION MADE AFTER A REVIEW OF ALL RELEVANT FACTORS.

The Petitioners maintain that their $1,000,000.00 bonds, with full cash value required, which has been set by the Illinois Supreme Court, violates the Eight and Fourteenth Amendments to the Constitution because it is the result of arbitrary action on the part of the courts below. The respondent maintain that certiorari should be denied in this case because no significant constitutional issue has been raised. Further, the actions of the courts

below were not arbitrary, as the bail bond was imposed after a full and fair hearing where all parties had an opportunity to present relevant factors for review.

It has always been aximatic under our system of justice that neither the eighth nor the fourteenth amendments require that everyone charged with a state offense must be given his liberty on bail bond pending trial. While it is inherent in our system that a right to bail shall generally exist, this has never been held to mean that a state must make every criminal offense subject to such a right or that the right provided as to offenses made subject to bail must be so administered that every accused will always be able to secure his liberty pending trial. It has been traditionally held that there are offenses of a nature as to which a state may properly deny bail. Mastrian v. Hedman, 326 F.2d

708, 710 (8th Cir. 1964). However, as to offenses where the state has provided a right to bail, it is constitutionally prohibited from setting bail pursuant to arbitrary and discriminatory guidelines which result in the setting of bail which is excessive to the nature of the offense charged, and which thus works to effect a denial or deprivation of the right to a particular accused. Id. at 711.

In Unted States v. Zylstra, 713 F.2d 1332 (7th Cir. 1983), the court wrestled with the question of whether the $1,000,000.00 bail imposed there, and which was reinstated on the third day of trial, violated the Constitution. That court, in holding the amount was not excessive, and quoting from United States v. Smith, 444 F.2d 61, 62 (8th Cir. 1971), cert. denied, sub, nom., Haley v. United States, 405 U.S.

977 (1972), held, "The primary purpose of bail is allow an accused person not yet tried to be free of restraint, while at the same time insuring that person's presence at the pending court proceedings." Zylstra, supra. at 1337. The Zylstra court concluded that, "It is a matter of common knowledge that the prosecution of big-time illegal drug trafficking is frequently hampered by threats to witnesses, prosecutors and even judges, which all too often are carried out. Traffic in illicit drugs is a matter of pressing national concern and the trial court was properly interested in seeing that at least one member of the conspriacy would be present in court during his entire trial." Id. at 1337-38.

As long as the primary reason in setting bond is to produce the accused's presence, the final amount, type and other

conditions of release are within the sound discretion of the releasing authority, and review is to be limited to focusing on whether that discretion was abused. United Sttes v. Jones, 674 F.2d 886, 891 (11th Cir. 1982).

In the instant case it is clear that the petitioners were afforded a full and fair opportunity to present evidence in their behalf at two separate bond hearings in the trial court. Moroever, they were provided the opportunity to present their views to the Illinois Appellate Court as well as the Illinois Supreme Court. It is clear that the amount of bond set by the trial court, and later by the Illinois Supreme Court, was the result of sound judicial discretion after a review of all relevant factors.

The facts of this case clearly support the imposition of the bonds for petitioners.

The petitioners, two Los Angelos residents, were arrested in Chicago after a large amount of drugs and cash, as well as a machine gun and notebook containing drug entries, were found in their control. Moreover, their answers to police questions, i.e., that "Santa Clause" must have left the money behind, show a total disrespect for the law and those who are charged with enforcing it. Also, one of petitioners, in a totally spontaneous statement, asked the police how they had caught them. Surely, it cannot be said, as petitioners would have this Court believe, that the setting of bond in this case was the result of arbitrary action on the part of the Illinois courts. Rather, the decision of the Illinois courts shows the exercise of sound judicial disrection and that judgment should not be disturbed.

The petitioners rely solely on the case of Garcia v. Elrod, No. 86-C-4779 (U.S.D.Ct., N.D. Ill. Sept. 5, 1986) (Shadur, J.), as controlling in this case. Garcia, however, involved the arbitrary imposition of bond pursuant to Ill. Rev. Stat. 1985, ch. 38, par. 110-7. Judge Shadur found that the bond imposed on Garcia was based soley on subsection(b)(4), which says that the street value of the drugs seized shall be considered in setting bond, and that the state court did not take into consideration any of the other factors listed in the statute. In the present case, as previously pointed out it is clear that the $1,000,000.00 bond eventually imposed did not reflect the total street value of the drugs seized, which was estimated at between $2,700,000.00 and $3,500,000.00. Therefore, it is clear that

securing the Los Angelos petitioners presence at trial in Chicago was the primary factor in setting bond in this case.

Also, as the Seventh Circuit so vividly set forth in Zylstra, because of the pressing national problem with drug trafficking, and because of the violence associated with the drug industry, a $1,000,000.00 bond in the present case does not violate the Eighth and Fourteenth Amendments to the Constitution.

Inasmuch as petitioners have failed to present a constitutional issue before this Court, but have rather simply requested the resolution of a factual issue, this Court should not waste its valuable judicial resources by granting certiorari. The respondent respectfully request that the petition be denied.

CONCLUSION

For all the foregoing reasons, respondent respectfully prays that this Honorable Court deny the instant petition for writ of certiorari.

Respectfull submitted,

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